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Question of the violation of human rights in the occupied Arab territories, including Palestine

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2, section A, and 2001/7 and Economic and Social Council decision 2001/246.

* In accordance with General Assembly resolution 55/222, part III, paragraph 10, the present report is being submitted on 4 October 2001 so as to include as much updated information as possible.

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Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967

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I. Introduction

1. The current Special Rapporteur, John Dugard (South Africa), was appointed in July 2001. In August 2001, the Special Rapporteur undertook a mission to the Occupied Palestinian Territories and Israel. Meetings were held with Palestinian and Israeli non-governmental organizations, international agencies in the region and members of the Palestinian Authority. Unfortunately, the Special Rapporteur was not able to meet with Israeli authorities as the Government of Israel made it clear at the outset of his appointment that it would not cooperate because of objections it has to the terms of his mandate. (This matter is discussed below.) On this mission, the Special Rapporteur met with interlocutors in the Gaza Strip, Jerusalem and the West Bank. The Special Rapporteur also visited Rafah, Beit Jala and Shu'afat to see the destruction of houses and property, and Jericho, to examine the manner in which the city had been closed by means of trenches cutting off access roads.

2. In February 2001, the Special Rapporteur visited the area as the chairperson of the Human Rights Inquiry Commission established pursuant to Commission on Human Rights resolution S-5/1 of 19 October 2000. That Inquiry Commission spent more time in the area, consulted more widely with informed persons and prepared a more comprehensive report (E/CN.4/2001/121) than the present report. The Human Rights Inquiry Commission criticized the excessive use of force employed by the Israeli Defense Force, the assassination of prominent Palestinians, the presence and expansion of settlements in the West Bank and Gaza, the activities of settlers and the closure of Palestinian areas, which has resulted in the widespread violation of economic and social rights. The Commission made a number of recommendations designed to bring an end to the military occupation of the Occupied Palestinian Territories and to establish a dispensation that meets the legitimate expectations of the Palestinian people concerning the realization of their right to self-determination and the genuine security concerns of the people of Israel.

3. The present report is based on the two visits made to the area in 2001, consultation and discussion with persons outside the area, the study of materials on the situation in the Occupied Palestinian Territories and wide media coverage.

II. The mandate of the Special Rapporteur

4. The mandate of the Special Rapporteur is to be found in two instruments. In resolution 1993/2, section A, the Commission on Human Rights decided to appoint a Special Rapporteur with the following mandate:

"(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;

(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories."

In resolution 2001/7, the Commission on Human Rights welcomed the recommendations contained in the reports of the High Commissioner for Human Rights (E/CN.4/2001/114) and the Human Rights Inquiry Commission (E/CN.4/2001/121), urged the Government of Israel to implement them and requested "the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, acting as a monitoring mechanism, to follow up on the implementation of those recommendations and to submit reports thereon to the General Assembly at its fifty-sixth session and the Commission at its fifty-eighth session".

5. The mandate of the Special Rapporteur has been criticized by a number of States, particularly Israel, on the ground that it singles out Israel for special attention as a violator of human rights despite the fact that, since the implementation of the Oslo Accords (A/51/889-S/1997/357), and related agreements the control of the lives of over 90 per cent Palestinians has passed to the Palestinian Authority, which now has full control over the so-called "A" zones which include most Palestinian cities and towns. There would be substance in this criticism if the mandate of the Special Rapporteur were to investigate and report on Israel's violations of human rights in the Occupied Palestinian Territories without regard to the military occupation of those territories. This would be unfair as the Palestinian Authority does, for instance, have full jurisdiction over the administration of justice in the "A" zones and in most societies it is in this field that most violations of human rights occur. The mandate of the Special Rapporteur is not, however, to investigate human rights violations in the Occupied Palestinian Territories outside the context of military occupation. Resolution 1993/2, section A makes it clear that the Special Rapporteur is required to investigate violations of international humanitarian law committed by the occupying authority — *Israel* — until the end of the Israeli occupation of the Occupied Palestinian Territories. There is a close connection between international humanitarian law and human rights — a connection reaffirmed by the General Assembly in its resolution 2675 (XXV). It is therefore impossible to examine violations of international humanitarian law or general international law without reference to human rights norms, particularly in a situation of prolonged occupation of the kind that continues to prevail in the Occupied Palestinian Territories. The mandate therefore includes the investigation of human rights violations committed by Israel in the Occupied Palestinian Territories, but only in the context of military occupation. It is the prolonged military occupation of the Occupied Palestinian Territories which makes the mandate of the Special Rapporteur unusual and which distinguishes it from other special rapporteurships established by the Commission on Human Rights.

III. The occupation as the root cause of the conflict

6. In 1967, Israel occupied the West Bank and Gaza Strip. This occupation continues some 34 years later. Israel has invoked a number of arguments to support its legal claim that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 is not applicable to the Palestinian territories occupied by Israel since 1987, including East Jerusalem. First, it argues that as the sovereignty of Jordan over the West Bank was questionable and Egypt never asserted sovereignty over Gaza, there was no sovereign Power at whose expense Israel occupied these territories. Consequently, although Israel is a party to

the Fourth Geneva Convention of 1949, it maintains that it is not bound by law to treat the territories as occupied territories within the meaning of the Fourth Geneva Convention. Secondly, it now argues that, even if the above argument is incorrect, that Israel can no longer be viewed as an occupying Power in respect of the "A" areas, accommodating the majority of the Palestinian population, because effective control in those areas has been handed over to the Palestinian Authority.

7. Neither of those arguments is tenable in law. The first, premised on a strained interpretation of article 2 of the Geneva Convention, fails to take account of the fact that the law of occupation is concerned with the interests of the population of an occupied territory rather than those of a displaced sovereign. The second, that Israel is no longer an occupying Power because it lacks effective control over "A" areas of the Occupied Palestinian Territories, is likewise unacceptable. The test for the application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nürnberg *In re List and others (The Hostages Case)* in 1948. The Oslo Accords leave Israel with ultimate legal control over all of the Occupied Palestinian Territories and the fact that for political reasons it has generally chosen not to exercise this control over the "A" zones, when it undoubtedly has the military capacity to do so (as illustrated by the Israeli military incursion into the "A" zone town of Beit Jala in August 2001), cannot relieve Israel of its responsibilities as an occupying Power.

8. The international community therefore rejects the argument that the Fourth Geneva Convention is inapplicable to the Occupied Palestinian Territories. Repeated resolutions of the Security Council and the General Assembly call upon Israel to comply with the prescriptions of the Convention and reject the purported annexation of East Jerusalem by Israel. For the international community, the Fourth Geneva Convention is the governing law.

9. Violence in the Occupied Palestinian Territories and Israel during the past several months has tended to obscure the fact that the root cause of the present conflict in the region is military occupation. Media reports are so concerned with the killing of Palestinian leaders by carefully directed missiles and with suicide bombings within Israel that the fact of occupation is overlooked. At times, the conflict is portrayed as if it were an international conflict between two States, employing different instruments of war, over "disputed territories". At other times, it is portrayed as an internal conflict with the rebels employing terror as a military strategy. The United States-brokered "Tenet ceasefire plan" (*Ha'aretz*, June 14, 2001), while a laudable attempt to end the violence in the region, nowhere mentions the military occupation in its concern for security and crisis management. It should not, however, be forgotten that Israel occupied the West Bank (including East Jerusalem) and the Gaza Strip by force in 1967; that this occupation should be brought to an end, as by its very nature military occupation is a temporary phenomenon pending an acceptable peace settlement; and that until the occupation is terminated, Israel, as the occupying Power, is obliged to comply with the Fourth Geneva Convention.

10. The present report focuses on military occupation as the root cause of the present conflict in the Occupied Palestinian Territories and Israel, as the cause of the violation of human rights and humanitarian law in the region. It aims to restore

occupation to centre stage. The violence in the region, whether caused by Israeli rocket-ships or Palestinian suicide bombers, is to be deplored and condemned. It is the immediate cause of the loss of life, of the violation of the right to life, that features pre-eminently in all human rights conventions. However, it is not the ultimate explanation for the violation of basic human rights in the region. This must be found in the military occupation of a people by an occupying power.

IV. Violence and loss of life

11. Since the start of the second intifada, in September 2000, over 530 Palestinians have been killed and over 15,000 injured. More than 150 Israelis have been killed. Most of those killed and injured have been civilians.

12. The first few months of the second intifada were characterized by violent clashes between Palestinian protesters, whose weapons were stones and molotov cocktails, and the Israel Defense Force. Most deaths and injuries were the result of gunfire from the Israel Defense Forces. In its report, the Human Rights Inquiry Commission found that the Israel Defense Forces had responded in a disproportionate manner to protesters and was guilty of the excessive use of force (E/CN.4/2001/121, paras. 44-52). Since then, the situation has changed radically as the Palestinians have moved from protest to armed force and the Israelis have responded by using heavier weaponry. Today, most Palestinian deaths have resulted from missile attacks directed at selected individuals suspected of terrorism, but which, inevitably, have also killed innocent bystanders, and from shootings carried out by soldiers and settlers, often after an exchange of gunfire. Israeli deaths have largely been caused by terrorist bombs in Israel itself and by gunfire directed at settlers on bypass roads or in the proximity of settlements.

13. In February 2001, the Human Rights Inquiry Commission had difficulty in categorizing the situation as a non-international armed conflict, defined by the Appeals Chambers of the International Criminal Tribunal for the Former Yugoslavia in the *Tadic* case as "protracted armed violence between governmental authorities and organized armed groups". Today, as a result of the frequent exchanges of gunfire between the Israel Defense Forces and Palestinian gunmen, it is probable that this threshold has been met, albeit on an irregular and sporadic basis. However, while the Israel Defense Forces are now engaged in both law enforcement and action in armed conflict, and may therefore be entitled to greater latitude in the exercise of its powers as an occupying force, it is not freed from all restraints under international humanitarian law and human rights law. It is still obliged to observe the principle of distinction requiring that civilians not be made the object of attack "unless and for such time as they take a direct part in hostilities" (a principle reaffirmed in article 51(3) of Additional Protocol 1 to the Geneva Conventions). In addition, the Israel Defense Forces are obliged to comply with the principle of proportionality, which requires that injury to non-combatants or damage to civilian objects not be disproportionate to the military advantages derived from an operation. Above all, the Israel Defense Forces are subject to article 27 of the Fourth Geneva Convention, which stipulates that "protected persons are entitled in all circumstances, to respect for their persons and shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof ...".

14. Both Israelis and Palestinians have violated important norms of humanitarian law and international law as the confrontation has changed its character. Israel's freely acknowledged practice of selected assassination or targeted killings of Palestinian activists cannot be reconciled with provisions of the Fourth Geneva Convention, such as articles 27 and 32, which seek to protect the lives of protected persons not taking a direct part in hostilities. They also violate human rights norms that affirm the right to life and the prohibition on execution of civilians without trial and a fair judicial process. There is no basis for killing protected persons on the basis of suspicion that they have engaged or will engage in terroristic activities. In addition, many civilians not suspected of any unlawful activity have been killed in these targeted killings, in the bombing of villages or in gunfire exchanges, in circumstances indicating an indiscriminate and disproportionate use of force.

15. The force employed by Palestinians is also contrary to the norms of international law. The shooting of settlers cannot be justified. Despite the fact that the settlements violate article 49(6) of the Fourth Geneva Convention, and the fact that the settlers' presence in the Occupied Palestinian Territories is illegal, settlers remain civilians and cannot be treated as combatants, unless, of course, they are engaged as soldiers in the Israel Defense Forces. The planting of bombs in public places in Israel, resulting in loss of life of innocent civilians, is contrary to emerging norms of international law, now codified in the 1998 International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164), article 2 of which criminalizes such conduct. The extent to which these actions are subject to the control of the Palestinian Authority is uncertain. No doubt it could do more to prevent the shooting of settlers and the culture of violence that produces suicide bombers. On the other hand, despite Israeli claims to the contrary, it seems unlikely that Palestinian violence is subject to any centralized control. In this respect, it differs from the Israeli use of force.

16. The failure of attempts to end the violence, either by calls for a ceasefire from the parties to the conflict, or from third States (notably the United States), or by security arrangements brokered from outside (such as the Tenet plan), suggests that the time has come for some international presence in the region to monitor and reduce the use of violence. This obvious conclusion was affirmed by the G8 Foreign Ministers in their meeting in Rome on 18 and 19 July 2001. Despite this, attempts to persuade the Security Council to approve such a plan have failed. The Special Rapporteur finds it difficult to understand why no serious attempt has been made by the international community to persuade Israel to accept such a presence (the Palestinian Authority having already agreed to an international presence). International monitors or peacekeepers have been employed in many less threatening situations in the world and there is no reason why the Occupied Palestinian Territories should be treated differently.

V. Occupation and the second intifada

17. The principal cause of the second intifada and of the escalating violence, in the view of the Special Rapporteur, is the continuing occupation — an occupation which has continued for over 34 years in the face of condemnation by the United Nations; an occupation whose substance (albeit not form) remained unaltered throughout the period of negotiations resulting from the Oslo Accords; an occupation that continues to frustrate and humiliate Palestinians. In the opinion of the Special Rapporteur,

peace will not be restored to the region until there is clear evidence of an intention on the part of the occupying Power to put an end to the occupation. At present, however, there is little evidence of such an intention. On the contrary, the signs of occupation have intensified since the start of the second intifada. Expanding settlements, demolition of houses and the destruction of property, restrictions on freedom of movement and the economic blockade are a constant reminder to Palestinians of the occupation.

A. Settlements

18. The international community is united in its categorization of Jewish settlements in the West Bank and Gaza as contrary to article 49(6) of the Fourth Geneva Convention, which prohibits an occupying power from transferring parts of its own civilian population into the territory it occupies. Numerous resolutions of the Security Council and the General Assembly have condemned the settlements as illegal.

19. Today, there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 380,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements are linked to each other and Israel by a vast system of bypass roads (from which Palestinian vehicles are excluded), which have a 50 to 75-metre buffer zone on each side of the road in which no building is permitted. These settlements and roads, which separate Palestinian communities and deprive Palestinians of agricultural land have fragmented both land and people. In effect, they foreclose the possibility of a Palestinian State as they destroy the territorial integrity of the Palestinian territory.

20. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israel military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against Palestinians and destroyed Palestinian agricultural land and property. Since the beginning of the second intifada, incidents of settler violence have dramatically increased. Palestinian hostility towards settlers has grown alarmingly since the start of this intifada and most of the Israelis killed in the present conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements.

21. That peace is impossible without a complete freeze on all settlement activity was emphasized by the "Mitchell report" of 20 May 2001 (report of the Sharm Al Sheikh Fact-finding Committee). The response of the Government of Israel to that recommendation was far from satisfactory. It declared that "it is already part of the policy of the Government of Israel not to establish new settlements. At the same time, the current and everyday needs of the development of such communities must be taken into account". In other words, the "natural growth" of the settlements will continue.

22. The evidence of the continued expansion of settlement activity is all too clear. During his visit, the Special Rapporteur saw evidence of this in the form of construction activity in the settlements of Har Homa and Pisgat Ze'ev and in the extension of the buffer zones adjacent to bypass/settler roads in the Gaza Strip. He also received evidence of the growth in the number of housing units, the expansion of the territorial limits of settlements by means of caravan outposts established

adjacent to settlements, and of an increase in the settler population in the West Bank and Gaza from 203,067 in December 2000 to 205,015 in June 2001. Generous tax breaks and cheap housing in the settlements ensure that their growth will continue.

B. Demolition of houses and destruction of property

23. The demolition of houses in Palestinian territory, either for security purposes (as in Rafah) or for administrative reasons (as in the refugee camp of Shu'afat) continue. Since September 2000, over 300 homes have been completely demolished (compared with 93 in 1999). The Special Rapporteur saw evidence of the demolition of houses in Rafah and Shu'afat by bulldozer and of the destruction of houses in Beit Jala by missiles. This action, on the part of the Israeli authorities, is difficult to reconcile with article 53 of the Fourth Geneva Convention, which prohibits the destruction of property except where rendered "*absolutely* necessary by military operations". While Israel sees this action as justified on grounds of military necessity, Palestinians see it as part of a larger design to restrict Palestinian growth, encourage Palestinian emigration and humiliate the people.

24. The creation of buffer zones for bypass roads and settlements has resulted in the "sweeping" of large areas of agricultural land by bulldozers. A total of 385,808 fruit and olive trees have been uprooted, and wells and agricultural constructions destroyed.

C. Closure and checkpoints: restrictions on freedom of movement

25. Since 29 September 2000, Israel has imposed severe restrictions on freedom of movement in the occupied territories. International borders with Egypt and Jordan have been closed, the Gaza Strip has been sealed off from the rest of the Palestinian territory and over a hundred checkpoints have been placed on roads in the West Bank. The Israel Defense Forces have placed checkpoints at the entrances to villages and entry and exit are often possible only via dirt roads, entailing enormous hardships. Trips that once took 15 minutes now take several hours. In some of the villages, mostly in areas near settlements and bypass roads, the dirt roads have also been blocked with large concrete blocks and piles of dirt, and residents are imprisoned in their villages. The Special Rapporteur visited the city of Jericho, which has been encircled by a deep trench to deny vehicles access to the city except through an Israel Defense Forces checkpoint.

26. The cumulative effect of these restrictions on the freedom of movement of people and goods is understandably perceived by the Palestinians affected as a siege. It has resulted in severe socio-economic hardships in the Palestinian territory. The internal closures have effectively sealed Palestinian population centres and restricted movement from one locality to another. The restriction on the entry of Palestinians into Israel has meant denial of access to their places of work in Israel to an estimated 115,000 Palestinians. The economic results have been devastating: the families of these workers are now suffering from a complete lack of income, threatening them with destitution. Over 50 per cent of the Palestinian workforce is now unemployed. Health and education have also suffered. Ambulances are prevented from transporting the sick to hospitals and some schools have been unable to operate owing to curfews and closures.

27. Road checkpoints have become a regular feature of Palestinian life. Palestinians are obliged to wait for lengthy periods while Israeli soldiers check vehicles and inspect identity documents. In order to avoid these delays Palestinians often abandon their cars or leave their taxi and cross the checkpoint on foot to catch a taxi on the other side of the checkpoint. This practice indicates the purpose of the exercise. It is not to prevent would-be suicide bombers from crossing checkpoints that lead to Israel, as any such person may walk around the checkpoint carrying heavy baggage. Rather, it is to humiliate Palestinians and to put pressure on them to cease resistance to Israeli occupation. In this sense, it is a collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention.

D. Orient House

28. On 10 August 2001, Israeli security forces seized and occupied Orient House, the political headquarters of the Palestinian people in East Jerusalem, in retaliation for a suicide bomb attack in West Jerusalem. This action, which may be seen as further evidence of a determination on the part of the Government of Israel to assert its authority as an occupying Power, has exacerbated an already tense situation and placed another obstacle in the path of peace.

VI. Concluding remarks

29. It is clearly necessary to bring the present violence in the Occupied Palestinian Territories and Israel to an end. Targeted killings of selected Palestinians by guided missiles, terrorist bombings in Israel and the indiscriminate killing of civilians by both sides must cease. That this is difficult to achieve is confirmed by the failures of numerous proclaimed ceasefires in recent months — failures for which both Israelis and Palestinians must accept responsibility. In these circumstances, there is a clear need for some international presence, either in the form of monitors or peacekeepers, to ensure that the ceasefire holds — or at least does better than at present. It is recommended that both Israel and the Palestinian Authority should agree to such an international presence. It is incumbent on the international community to ensure that such an agreement is forthcoming.

30. Israel's continued refusal to accept the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War as the governing law makes it imperative that the High Contracting Parties to the Convention convene as soon as possible to consider the applicability of the Convention and the violation of the Convention.

31. International humanitarian law and human rights norms have been seriously violated in the present conflict. Both Israelis and Palestinians should make every endeavour to promote respect for the rule of law. Israel's violation of the freedom of movement in the Occupied Palestinian Territories requires particular attention.

32. Settlements are an ever visible and aggravating sign of occupation and of Israel's illegal conduct as an occupying Power. It is not enough to merely impose a freeze on settlements. Steps must now start to dismantle settlements.

33. There is a need to rebuild confidence on both sides as a prelude to the resumption of negotiations leading to a permanent settlement. The Palestinians

could undoubtedly help to restore confidence by taking firmer measures to prevent terrorism in Israel. More is needed from Israel. Until Israel takes some action that indicates a willingness to contemplate the termination of the occupation, it is unlikely that the Palestinians will accept its good faith in negotiations aimed at a permanent settlement. Such action might take the form of a start in the dismantling of settlements: for example, the withdrawal of all settlements from the Gaza Strip. The Special Rapporteur appeals to the Government of Israel to take some action of this kind to restore confidence in the peace process.